

Law Offices of
William M. Wunderlich & Associates

William M. Wunderlich
Robert M. Miller*
Eve D. Dake

1504 Gravois Road
High Ridge, MO 63049

Medical/Legal Consultant
Eileen R. Kurtz, R.N.

(314) 677-5669
Fax (314) 677-8820
wunderlich@lmain.net

*Also admitted in Illinois

December 14, 1999

FILED

DEC 30 1999

Mr. Dale Hardy Roberts
Public Service Commission
301 West High Street, Suite 530
Jefferson City, MO 65101

Missouri Public
Service Commission

**Re: Motion to Cancel Certification of Axces Acquisition,
Inc. and Maintain the Certification of Axces, Inc.**

Our File No.: 343

TD-2000-399

Dear Sir or Madam:

Enclosed please find an original and fourteen (14) copies of a Motion regarding the above-referenced corporation. Please file these motions accordingly. I am enclosing two extra copies of the Motion for return in the enclosed self-addressed, stamped envelopes.

Additionally, please be advised that a copy of the Motion has been sent to the Office of Public Counsel.

Thank you for your cooperation and assistance in this regard.

Sincerely,

Sharon Marlow

Sharon Marlow
Legal Assistant

sm
Enclosures
cc: Office of Public Counsel
(w/Enclosures)
Monica Borne

FILED

DEC 30 1999

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

Missouri Public
Service Commission

In the Matter of the Application of)
Axces, Inc. to Cancel the)
Certificate of Service to Provide)
Intrastate Telecommunications Services)
within the State of Missouri of Axces)
Acquisition and to Maintain the Certificate)
of Service to Provide Intrastate)
Telecommunications Services of Axces, Inc.)

CASE NO. TD-2000-399

**MOTION TO CANCEL CERTIFICATION OF
AXCES ACQUISITION, INC. AND
MAINTAIN THE CERTIFICATION OF AXCES, INC.**

Axces Acquisition, Inc. (Axces Acquisition) applied to the Public Service Commission for a Certificate to Provide Interexchange Telecommunications Services in the State of Missouri. The Commission approved Axces Acquisition's Certificate Application and Proposed tariff, effective October 4, 1999, in Case No. TA-2000-179.¹

The certification of Axces Acquisition was requested in order to effect a Proposed Transfer of Assets of Axces, Inc. ("Axces") to Gemini II, Inc. ("Gemini"), which was filed with the Commission on June 17, 1999 in Case No. TM-99-601.² The proposed transaction would have resulted in Gemini acquiring all of the outstanding and issued shares of Axces common stock for equitable consideration through a merger of Axces with Axces Acquisition. Axces Acquisition would emerge as the surviving corporation. The proposed transaction was approved by the Commission based on the following conditions:

¹A copy of Commission Staff's Recommendation for Approval Memorandum dated September 10, 1999 is attached as Exhibit A.

²The Order Approving Transfer of Assets is attached as Exhibit B.

- 1) that Axces Acquisition obtain an approved Certificate of Service Authority and Tariff before completing the merger, and
- 2) That the Commission cancel the Certificate and Tariff of Axces, Inc. when the merger is consummated.

Axces, Inc. received a Certificate of Service Authority to Provide Intrastate Telecommunications Services in Missouri on December 22, 1995 in Case No. TA-96-95.

The proposed transaction which was approved by the Commission in Case No. TM-99-601 has been abandoned. The merger will not be consummated. On page three of the Order Approving Transfer of Assets, the Commission provides that it will "cancel the certificate and tariff of Axces once the Commission is notified that the merger is consummated." Because the merger will not be consummated, there is no requirement to cancel Axces' certificate and tariff.

Wherefore, Axces, Inc. requests that the Certificate granted to Axces Acquisition in Case No. TA-2000-179, in order to effect the now abandoned transaction, be canceled and that the Certificate of Axces, Inc., granted in Case No. TA-96-95, remain valid and in effect.



William M. Wunderlich #23302
Wunderlich & Associates
1504 Gravois
High Ridge, MO 63049
Phone: (314) 677-5669

EXHIBIT A

FILED

SEP 10 1999

Missouri Public
Service Commission

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. TA-2000-179 File No. 200000147
Applicant: Axces Acquisition, Inc.

FROM: Arthur P. Kuss *APK*
Telecommunications Department *BV*
Wes Henderson 9.9.99 *Wm K Haas 9/10/99*
Utility Operations General Counsel's Office/Date
Division/Date

SUBJECT: Staff Recommendation for Approval of Axces Acquisition, Inc.,
Certificate Application and Proposed Tariff to Provide
Interexchange Telecommunications Services.

DATE: September 08, 1999

Date assigned: August 23, 1999 Staff deadline: September 10, 1999

The Telecommunications Department Staff (Staff) recommends that the applicant be granted the following certificate(s), as indicated by check marks, to be effective on the same date the tariff becomes effective:

- ☒ Certificate to provide interexchange telecommunications services.
☒ Certificate to provide local exchange* telecommunications services.

*Local exchange authority should be restricted to dedicated, private line services.

Staff recommends the applicant receive competitive classification. Furthermore, Staff recommends approval of the applicant's proposed tariff, MO.P.S.C. No. 1 with a proposed effective date of October 04, 1999. In addition, Staff recommends approval of the waivers listed in the Notice.

There is an attachment to this recommendation indicating additional recommendations or special considerations:

Yes ☒

No ☐

Copies: Director - Utility Operations Division
Director - Research and Public Affairs Division
Director - Utility Services Division
General Counsel
Office of the Public Counsel
Attorney for Applicant - William M. Wunderlich
Attorney for Applicant - EllenAnn G. Sands
Attorney for Applicant - Benjamin W. Bronston

Application / Tariff Review Items	
<input checked="" type="checkbox"/>	No applications to intervene filed. Intervention deadline: 09-03-99
Application contains the following:	
<input checked="" type="checkbox"/>	Proper Secretary of State authorization.
<input checked="" type="checkbox"/>	Request for classification as a competitive telecommunications company.
<input checked="" type="checkbox"/>	All requested waivers are listed in the Notice and all requested waivers have been previously granted to other competitive companies.
Proposed tariff:	
<input checked="" type="checkbox"/>	Complies with PSC rules and statutes applicable to applicant.
<input type="checkbox"/> NA	If operator services are offered, operator services requirements are included.
<input type="checkbox"/> NA	Includes "interexchange" tariff text if it offers private line service w/o requesting a local certificate.
<input type="checkbox"/> NA	If ICB pricing proposed, only for private line.
<input type="checkbox"/> NA	If ICB pricing is offered, tariff includes standardized ICB text.
<input checked="" type="checkbox"/>	Rate structures or service offerings are similar to existing IXC offerings (In addition, tariff does not geographically de-average.)
<input type="checkbox"/> NA	If promotional offering text is included, it is the standardized promotional text.
<input checked="" type="checkbox"/>	Waivers listed in tariff match those listed in application and Notice.

Services Offered in Initial Tariff	
<input checked="" type="checkbox"/> 1+	<input type="checkbox"/> Private Line
<input checked="" type="checkbox"/> 800/888/877 Services	<input type="checkbox"/> Debit card
<input checked="" type="checkbox"/> Directory Assistance	<input checked="" type="checkbox"/> Travel Card
<input type="checkbox"/> Operator Services	<input type="checkbox"/> Other: _____

Has the proposed effective date been extended?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
New effective date: _____		
Have substitute tariff sheets been filed?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Date substitute sheets filed: <u>September 08, 1999</u>		

From:	Initials:	Date:	Revised:
Mr. Kuss	APK	09/08/99	
Wm. Voight	<i>BV</i>	<i>9-8</i>	
Mr. VanEschen	<i>VE</i>	<i>9/8</i>	
Mr. Henderson	<i>WH</i>	<i>9-8-99</i>	
Legal	<i>WKH</i>	<i>9/10/99</i>	

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. TA-2000-179 **File No.** 200000147

From: Arthur P. Kuss Telecommunications Department
Subject: Application of Axces Acquisition, Inc. for Certification to Provide
Interexchange Telecommunications Services
Date: September 08, 1999 ..

The Application (Application) for Certification of Axces Acquisition, Inc. (Axces) to provide interexchange telecommunications services does not list Regulation 4 CSR 240-10.020 in the list of regulations requested to be waived for this company. This Regulation is listed as one requested to be waived in the proposed tariff. As of this writing September 08, 1999, Axces has not filed an amendment to its application to request that this Regulation be added to its list of requested waivers, but has stated that such a filing is pending. Such a waiver is normally granted in similar cases, and Staff recommends that the Commission grant a waiver of 4 CSR 240-10.020.

EXHIBIT B

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 7th
day of October, 1999.

In the Matter of the Application for Approval of)
Agreement and Plan of Reorganization by and Among) Case No. TM-99-601
Axces, Inc., and Gemini II, Inc.)

ORDER APPROVING TRANSFER OF ASSETS

On June 17, 1999, Axces, Inc. (Axces), and Gemini II, Inc. (Gemini) (jointly referred to as the Applicants), filed an application for Commission approval of an Agreement and Plan of Reorganization whereby Axces will merge with and into Axces Acquisition Corp., Inc. (Axces Acquisition), a wholly owned subsidiary of Gemini. According to the application, the merger will result in the acquisition by Gemini of all of the outstanding and issued shares of Axces common stock for equitable consideration. After the transaction, the surviving corporation will bear the Axces name and will continue to operate, in all material respects, as Axces currently operates.

Axces is a privately held Delaware corporation with principal offices located 2500 Wilcrest, Suite 540, Houston, Texas 77042. Axces is a non-dominant carrier that resells domestic and international long distance service purchased from various facilities-based carriers.

Gemini is a privately held Delaware corporation with principal offices located at 1770 Motor Parkway, Suite 30, Hauppauge,

detrimental to the public interest and should be approved. The Commission will cancel the certificate and tariff of Axces once the Commission is notified that the merger is consummated.

IT IS THEREFORE ORDERED:

1. That application for approval of the Agreement and Plan of Reorganization filed by Axces, Inc., and Gemini II, Inc., is approved.

2. That the Applicants are authorized to take any and all actions necessary to effectuate the transaction contemplated by the joint application and this order.

3. That the Applicants shall file a pleading with the Missouri Public Service Commission notifying the Commission of the consummation of the proposed transaction, within ten days after the completion of the transaction.

4. That this order shall become effective on October 19, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray and Schemenauer,
CC., concur.
Crumpton and Drainer, CC., absent.

Ruth, Regulatory Law Judge

**STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

**WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,**

Missouri, this 07th day of October, 1999.



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

October 7, 1999

CASE NO: TM-99-601

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102


Benjamin W. Bronston/Ellen G. Sands
Nowalsky, Bronston, & Gothard APLLC
3500 North Causeway Boulevard, Suite 1442
Metairie, LA 70002

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

William M Wunderlich
Wunderlich & Associates
1504 Gravois
High Ridge, MO 63049

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy: